

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2019-107-00208C

Parcel No. 8847-17-154-004

Heritage Bank, N.A.,

Appellant,

vs.

Sioux City Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 22, 2020. Attorney Alex Berenstein represented Heritage Bank. Attorney Angie Schneiderman represented the Sioux City Board of Review.

Heritage Bank owns a commercial bank located at 4530 Singing Hills Boulevard, Sioux City. Its January 1, 2019, assessment was set at \$913,600. (Ex. B).

Heritage Bank petitioned the Board of Review contending its property's assessment is not equitable as compared with assessments of other like property in the taxing district and there is an error in the assessment. Iowa Code § 441.37(1)(a)(1, 4) (2019). The Board of Review modified the assessment, setting it at \$884,500, allocated as \$482,800 in land value and \$401,700 in improvement value. (Ex. A, p. 1).

On appeal to PAAB, Heritage Bank asserts its assessment is for more than the value authorized by law. § 441.37(1)(a)(2).

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may

consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Findings of Fact

The subject property is a one-story bank branch built in 1998. It has 2768 square feet of gross building area and no basement. It also has a bank window with a remote pneumatic, a vault, a canopy, exterior ATM, and 15,960 and 1,360 square feet of asphalt and concrete paving respectively. The improvements are listed in normal condition with a 4-00 Grade (average quality). The site is 1.502 acres. (Ex. A).

Heritage Bank submitted a Broker's Opinion of Value (BOV) completed by Chris Bogenrief, SIOR, CCIM with NAI United Commercial Real Estate Services. (Ex. 19A). Bogenrief's evaluation was completed in June 2020. He explained that banks are seldom sold for continued bank use and in his opinion the property would be sold and used as a general office building. Therefore, he searched for sales of "Class B" office buildings in Iowa, Nebraska, and South Dakota. His summary explains the best local sale is an older sale of a bank located at 903 3rd Street, Sioux City. That property sold in 2013 for \$183 per square foot, for continued bank use. In his opinion, the office building market is "stagnant" and has not significantly appreciated since 2013. The building was built in 2002, is slightly smaller than the subject, and located on a smaller site. He reports the traffic counts for that property are similar to the subject and the sale included an excess lot. This sale appears to serve as the primary, if not sole, basis for his opinion of value. Bogenrief estimates the subject's value at \$183 per square foot, or \$506,544.

We view Bogenrief's claim that the Sioux City office building market has effectively remained stagnant since 2013 with some skepticism. Not only did he provide no support for his assertion, but it is contradicted by evidence in the record. We note a

2016 office building listing located on the same street as the subject and marketed by Bogenrief states, “Sioux City is experiencing an economic boom with a \$2b fertilizer plant and \$264m pork processing plant under construction.” (Ex. 2). That property’s sale price per square foot and another 2019 proximate sale (Ex. 8) both exceed the 2013 per square foot sale price of 903 3rd Street.

Bogenrief testified that banks typically sell as part of multi-location, portfolio transactions, which makes it difficult to identify the value of individual locations. Typically when he values banks, he considers a “general office use much more likely.” Thus, when valuing the subject, he considered the most likely buyer to be for general or professional office use who will need to convert the building to that use. He searched the local and regional market for Class B office building sales. His report includes beacon summary sheets or listing sheets for seventeen sold properties, all with different uses than the subject. The following table is a summary of Bogenrief’s seventeen comparables. (Exs. 19A, 1, 2, 6).

Comparable	Sale Date	Sale Price	Gross Building Area (SF)	SP/SF
Subject - 4530 Singing Hills Blvd, Sioux City, IA	-	-	2768	-
1 - 3700 Touzalin Ave, Lincoln, NE	3-2020	\$103,850	1800	\$57.69
2 - 250 W 35th St, Davenport, IA	10-2018	\$225,000	3345	\$67.26
3 - 4016 Morningside Ave, Sioux City, IA	12-2019	\$300,000	4000	\$75.00
4 - 4010 Stadium Dr, Sioux City, IA	5-2017	\$353,800	3768	\$94.00
5 - 1400 Pierce St, Sioux City, IA	6-2019	\$397,372	3983	\$100.00
6 - 4100 Morningside Ave, Sioux City, IA	3-2020	\$550,000	4453	\$124.00
7 - 2601 Apache Ct, Sioux City, IA	1-2014	\$330,000	2564	\$129.00
8 - 121 Gateway Dr, Sioux City, SD	11-2014	\$310,000	2352	\$131.80
9 - 8797 NW 54th Ave, Johnston, IA	2-2019	\$695,000	4910	\$141.55
10 - 2302 W 1st St, Ankeny, IA	12-2018	\$395,000	2651	\$149.00
11 - 1620 NW 114th St, Clive, IA	1-2019	\$495,000	3127	\$158.30
12 - 5010 S Minnesota Ave, Sioux Falls, SD	4-2020	\$675,000	3964	\$170.28
13 - 335 Sioux Point Rd, Sioux City, SD	12-2017	\$1,075,000	NA	\$194.00
14 - 3500 Singing Hills Blvd, Sioux City, IA	12-2016	\$1,238,694	12222	\$203.00
15 - 4801 Southern Hills Dr, Sioux City, IA	7-2019	\$725,000	3041	\$238.00
16 - 389 W Steamboat Dr, Dakota Dunes, SD	Unk	\$475,600	1980	\$240.00
17 - 4000 Indian Hills Dr, Sioux City, IA	4-2016	\$1,875,000	7497	\$253.00

We note the evidence contains minimal information regarding the nature of the sale transactions and we are unable to make findings as to whether all of the sales are

normal, arm's length transactions under Iowa Code section 441.21(1). Some of them, including the sales of comparables 1, 5, 6, 7, and 17, have indicia of abnormality. These sales include transfers after a foreclosure (Comparable 5), sales between landlord and tenant (Comparable 6), assemblage purchases (Comparable 7), and multi-parcel sales between related parties. (Comparable 17).

Bogenrief made no adjustments to any of his comparable properties for any differences between them and the subject property. The comparables bracket the subject's age and size.

The Board of Review was critical of the different uses of the comparables and Bogenrief confirmed they were not sold for bank use like the subject property. However, he believes the subject would be sold for office use and these comparables are most similar in appeal to the subject. He testified that none of the comparables had vaults, teller lines, a night deposit box, or other bank related design features. However, in his opinion these do not contribute value to the subject because it would be sold for office use and not continued bank use. In fact, his BOV states "a general office user will not typically pay as much as a bank, as they have some conversion costs." He believes these features of the subject would need to be removed for a future use and therefore do not contribute value to the property.

The Board of Review criticized Bogenrief's analysis and sales. It asserted at least eight sales occurred after the January 1, 2019, assessment date and all had different uses. It asserted Bogenrief used incorrect comparables and therefore his value opinion was not credible.

Heritage Bank also submitted a listing sheet for an additional sale at 3100 S Lakeport Rd, Sioux City, IA. (Ex. 4). Exhibit 4 states it was a non-arm's length sale because it was a contract/installment sale. Therefore, we give the sale no further consideration.

John Lawson, the City Assessor for Sioux City, testified on behalf of the Board of Review. He testified three banks have been constructed in the last 18 months in Sioux City, but explained no bank sales have occurred within Sioux City over the past six years. Therefore, to support the assessed value he needed to go outside the area for

comparable sales. He submitted seven Iowa bank transactions for analysis. In addition, the Board of Review submitted eight bank sales from around the country. (Exs. E-J). He admitted the national sales were given little to no consideration and offered only because of a lack of local sales.

The following table is a summary of the Board of Review's seven Iowa bank sales. (Exs. E-J). Sales A & B and Sales F & G are sales of the same property.

Comparable	Sale Date	Grade	Sale Price	Gross Building Area (SF)	SP/SF
Subject - 4530 Singing Hills Blvd, Sioux City, IA		4-00		2768	
A - 5210 Council St NE, Cedar Rapids	5-2015	2-00	\$1,265,000	3774	\$335.19
B - 5210 Council St NE, Cedar Rapids	11-2016	2-00	\$1,360,000	3774	\$360.36
C - 475 Cedar Cross Rd, Dubuque	12-2015	N/A	\$2,000,000	5426	\$368.60
D - 2045 Holliday Dr, Dubuque	7-2014	N/A	\$1,700,000	4053	\$419.44
E - 3820 8th St SW, Altoona	10-2016	2-00	\$2,365,080	4934	\$479.34
F - 4885 Mills Civic Pkwy, West Des Moines	12-2017	3+00	\$2,050,000	3633	\$564.27
G - 4885 Mills Civic Pkwy, West Des Moines	1-2015	3+00	\$2,300,000	3633	\$633.09

Like Bogengrief, the Board of Review did not adjust its sales for differences between them and the subject property. The properties are located in larger metro areas. In addition, the five properties have superior quality grades and are newer compared to the subject. Because of these differences it may be expected that these sales would have a higher price per square foot than the subject. However, all sales are larger in square footage. A larger total square footage typically has a lower price per square foot.

The Board of Review also developed an income approach. (Ex. T). It submitted lease information from Net Lease Advisor, a real estate data provider. Leases from eight national and regional bank companies were summarized in a table. (Ex. K-S). The eight institutions reported a range of lease rates for various bank locations. An average was calculated using the range for each institution. A median lease rate of \$46.31 per square foot was calculated from these averages. A median capitalization rate of 5.10% was reported from these same eight bank companies. Based on this information the Board of Review developed an income approach to estimate the subject's value. The Board of Review concluded a value of \$845,000 for the subject property after estimating

a \$25 per square foot triple net lease rate, a 10% expense ratio, and a 7% capitalization rate. (Ex. T). No additional support for the subject's lease rate or capitalization rate is given and it is unknown how he reconciled to these rates.

The Board of Review submitted twelve vacant land sales in support of the assessor's land valuation and cost approach. (Ex. BB). It made no adjustments to these vacant land sales for differences between them and the subject but asserts the unadjusted sale prices of these land sales support the subject's assessed land value. These comparable land sales range in size from 23,753 to 217,930 square feet and indicate a sale price per square foot of \$6.60 to \$38.47. The subject's assessed land value per square foot (\$7.38 per square foot) is near the lower end of this range which the Board of Review asserts supports the assessment.

Lawson also testified a new bank was built in 2018 with a cost new of \$263 per square foot. He gave no address or additional information regarding this property such as its size, quality, or additional features.

Although equity is not a part of Heritage's appeal, the Board of Review submitted a table listing bank property assessments. (Ex. U). Lawson testified he considered six properties most comparable to the subject, which are highlighted on Exhibit U. Those properties range from 2260 to 3016 square feet and had an assessed value per square foot between \$222.25 and \$373.24. The Board of Review believes the subject's assessment of \$319.54 per square foot is supported by these comparables and shows equity in the assessments. Because Heritage Bank did not claim inequity, we give no consideration to these properties.

Analysis & Conclusions of Law

Heritage Bank contends the subject property is assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(2) (2019).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted).

There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted). To shift the burden, the taxpayer must “offer[] competent evidence that the market value of the property is different than the market value determined by the assessor.” Iowa Code § 441.21(3). To be competent evidence, it must “comply with the statutory scheme for property valuation for tax assessment purposes.” *Soifer*, 759 N.W.2d at 782.

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property’s fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm’s-length sale of the property. *Id.* The sales comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). “Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value.”

§ 441.21(1)(b). Sale prices of property in abnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to account for market distortion. *Id.* Other approaches to value can only be considered if it is shown the subject’s market value cannot be readily established by the sales approach. § 441.21(2).

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W.2d at 783. “Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.” *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)). Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted). “Factors that bear on the competency of evidence of other sales include, with

respect to the property, its '[s]ize, use, location and character,'" and, with respect to the sale, its nature and timing. *Id.* (other citations omitted). Sale prices must be adjusted "to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments". *Id.* (other citations omitted). "[A] difference in use does affect the persuasiveness of such evidence because 'as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced.'" *Soifer*, 759 N.W.2d at 785 (quoting *Bartlett & Co. Grain*, 253 N.W.2d at 93).

Heritage Bank submitted the Bogenrief BPO concluding an estimate of value of \$506,544. Bogenrief relied on the sales comparison approach to value. Bogenrief's testimony that he valued the property as a general office building is not consistent with Iowa Code for assessment valuation because it does not value the subject at its current use. He gave no value to many of the subject's bank features and testified it would have a higher value for continued bank use. Except as specifically stated, we give no consideration to Bogenrief's non-bank sales, as they do not reflect the current use of the subject.¹ There is also a lack of information for most of the non-bank sales to determine if the transactions were normal under section 441.21(1). Moreover, there are differences between the properties and the subject for which Bogenrief did not adjust. For these

¹ While the comparables do not need to be identical and the use of properties likewise need not be identical, a difference in use does affect the persuasiveness of such evidence. *Soifer*, 759 N.W.2d at 785. The *Soifer* court stated, "as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced." *Id.* Citing *Bartlett & Co. Grain*, 253 N.W.2d 86, 93 (Iowa 1977). In *Soifer*, the Court found Blanchfield undervalued the Soifers' fast food restaurant because he primarily relied on properties that, although formerly fast food restaurants, were not used as fast-food restaurants after their sale. *Id.* at 791. It stated that their "sales prices did not completely capture the value of the properties in their present use" and undervalued the subject property. *Id.* The change in use reduces the persuasiveness of these sales. *Hy-Vee, Inc. v. Dallas Cnty. Bd. of Review*, 2014 WL 4937892 (Iowa Ct. App. Oct. 1, 2014) (noting that the use of comparables need not be identical to the subject, but a difference in use affects the persuasiveness of the sale) (citations omitted). In *Hy-Vee*, the Court of Appeals concluded the Board of Review's expert's report that relied on sales showing continued operation as grocery stores enhanced the persuasiveness of the evidence. *Id.* at *5. It was not persuaded to rely on Hy-Vee's experts' who "each compared only one or two grocery stores, which either had been vacant, were re-purposed after the sale, or were much smaller in size and scale than the Hy-Vee supermarket." *Id.* at *2. We do not find Bogenrief's unadjusted office sales comparable to the subject property and find they would not reflect the value of the subject property in its current use as an operating bank.

reasons, we find Bogenrief's non-bank sales do not comply with the statutory scheme and cannot be used for burden-shifting purposes. § 441.21(3).

In addition to those issues, Bogenrief's opinion appears to give primary consideration to one sale - the 2013 sale of 930 3rd Street. The sale is listed as normal on the Beacon report and demonstrates continued bank use. Bogenrief made no adjustments for physical differences or for changes in the market. He asserts the Sioux City office market has not appreciated since 2013 and 903 3rd Street's per-square-foot price of \$183 continues to represent the subject's per square foot value in 2019. 930 3rd Street is newer and has a larger canopy when compared with the subject, but is smaller, has no bank vault, and is located on a smaller site. (Ex. W). Bogenrief stated the properties have similar traffic counts, but there is no evidence or testimony regarding their relative locations. We note the subject and 930 3rd Street have similar 2019 assessed values for their improvements, but their assessed land values differ significantly. Thus, even accounting for their size differences, it appears the Assessor views the subject's site and location as superior.

We are not persuaded the subject's market has remained stagnant since 2013 or that the 2013 sale represents the subject's market value in 2019. Bogenrief's testimony is contradicted by his own 2016 listing stating Sioux City is in an economic boom. Further, more recent sales of office buildings located near the subject (Exs. 2, 8) exceed the \$183 per-square-foot value on which Bogenrief relied.

Considering the foregoing, we find Bogenrief's BPO is not sufficiently competent to shift the burden of proof to the Board of Review, is not a reliable indication of the subject property's market value as of January 1, 2019, and we are not convinced the subject's assessment is excessive. § 441.21(3). We find Heritage Bank has not demonstrated the subject is assessed for more than the value authorized by law.

Order

PAAB HEREBY AFFIRMS the Sioux City Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2019).



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

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